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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 MATTHEW STEIN, *et al.*,

4 Plaintiffs/Counterclaim
5 Defendants,

6 v.

23 Civ. 2508 (NRB)

7 SKATTEFORVALTNINGEN, *et al.*,

Oral Argument

8 Defendants/Counterclaim
9 Plaintiffs,

10 v.

LUKE McGEE

11 Counterclaim Defendant.

12 -----x
13 New York, N.Y.
14 May 21, 2024
15 3:05 p.m.

Before:

16 HON. NAOMI REICE BUCHWALD,

17 District Judge

18 APPEARANCES

19 MCKOOL SMITH & HENNIGAN

20 Attorneys for Plaintiffs/Counterclaim Defendants Matthew
Stein and Jerome Lhote

21 BY: DANIEL W. LEVY

22 HUGHES HUBBARD & REED LLP

23 Attorneys for Defendant/Counterclaim Plaintiff SKAT
BY: MARC WEINSTEIN
GREGORY CHARLES FARRELL
WILLIAM R. MAGUIRE

24 BROAD AND CASSEL

25 Attorneys for Counterclaim Defendant Luke McGee
BY: DANIEL S. NEWMAN

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1 (Case called)

2 THE COURT: Good afternoon. You may be seated.

3 THE LAW CLERK: This is Stein v. SKAT, 23 Civ. 2508.

4 Is the plaintiff present and ready to proceed?

5 MR. LEVY: Good afternoon, your Honor.

6 Daniel Levy for Matthew Stein and Jerome Lhote,
7 L-h-o-t-e, and Mr. Stein is in the rear of the courtroom.

8 THE COURT: Wait. Hi, Mr. —

9 MR. LEVY: The gentleman in the light-colored suit and
10 the green tie.

11 THE COURT: All right.

12 THE LAW CLERK: And is the defendant SKAT present and
13 ready to proceed?

14 MR. WEINSTEIN: Yes, your Honor. Marc Weinstein, Bill
15 McGuire, and Gregory Farrell from Hughes, Hubbard & Reed on
16 behalf of SKAT.

17 THE LAW CLERK: And finally, is counsel for Mr. McGee
18 present and ready to proceed?

19 MR. NEWMAN: Yes. Good afternoon, your Honor.

20 Daniel Newman on behalf of Luke M. McGee from Broad
21 and Cassel.

22 THE COURT: All right. I asked you to come in because
23 of the pending correspondence and because I have several
24 questions, and I'm hoping that your answers are fulsome since I
25 have a sense that there are major portions of this story that

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1 have not been shared with the Court.

2 Let me make it clear that I'm not saying that any
3 lawyer has been unethical, but, rather, that the gaps are
4 leading to serious skepticism about what I'm being told.

5 So let's just begin with this question: What is the
6 status of the criminal case in Denmark?

7 MR. LEVY: Sure, your Honor. The criminal case has
8 been pending for some time Mr. Lhote, Mr. McGee, and Mr. Stein
9 were originally charged in about April of 2021. They were
10 charged with several other people. None of those people has
11 appeared in the Danish criminal case. They're at large.

12 As the initial discussions between Mr. Stein and
13 Mr. Lhote and Mr. McGee with the Danish prosecutors concerned
14 making sure that there was some security that they would appear
15 when necessary and they had a number of discussions with the
16 Danish prosecutors about providing the Danish prosecutors with
17 their passports to ensure that they would appear when
18 necessary, and as of now they've not needed to appear for
19 trial.

20 There's a related criminal case going on against
21 someone named Sanjay Shah. He's charged in a separate charging
22 instrument in Denmark. And the hearings — the trial of him is
23 ongoing and is expected to continue for some time. I believe
24 into the first quarter of 2025. The way that criminal trials
25 unfold in Denmark is it's not like here where it continues day

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1 to day and then it's done. There's a couple of days here, a
2 couple of days there, and they are scheduled long in advance.

3 THE COURT: Are there no juries? Do you know? That's
4 just a curious question.

5 MR. LEVY: I think there's a — the decision is made
6 by a panel of individuals. I don't think it would be quite
7 what you and I would call a jury, but that recollection is a
8 little bit fuzzy. It's been explained to me, but I don't have
9 immediate recall of exactly how the decisions are made.

10 But, again, there's another defendant who is, in
11 effect, on trial, and that trial is expected to occur — I
12 believe that the dates have been scheduled as far out as
13 sometime in early 2025. I have the schedule somewhere. If the
14 courts want it, I can provide it, or I can provide more detail
15 in another manner.

16 THE COURT: From what you said, would I be correct in
17 understanding that neither Mr. Stein, Mr. Lhote, nor Mr. McGee
18 have ever made a physical appearance in Denmark?

19 MR. LEVY: They have not had to make a physical
20 appearance. They've not been required to make a physical
21 appearance. They're not fugitives. The lawyers had an
22 arrangement with the prosecutor in Denmark about ensuring that
23 they would come to court when necessary, but it's not like here
24 where someone needs to make an initial appearance in order to
25 sort of start the ball rolling. They've had productive and

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1 professional discussions with the prosecutor in Denmark that
2 they will appear when necessary, and their passports — they've
3 surrendered their passport so that they cannot go anywhere.

4 THE COURT: They're confined to the United States?

5 MR. LEVY: Effectively confined to the United States.
6 That's my understanding.

7 And there's been no schedule set for further
8 proceedings, like a trial, in their criminal case.

9 THE COURT: OK.

10 MR. LEVY: There's aspects of the Danish criminal case
11 that are complicated. They've been complicated for me to
12 understand as well.

13 THE COURT: No. Honestly, it was a fairly
14 straightforward question, which is what's going on there?
15 That's all.

16 MR. LEVY: Yeah.

17 THE COURT: If anything.

18 MR. LEVY: Yeah. And hopefully, you now have an
19 answer, and if there's some aspect you'd like me to get further
20 information on, please let me know.

21 THE COURT: I think I'm OK.

22 But Mr. Weinstein has stood up, so maybe there's
23 something he wants me to know.

24 MR. WEINSTEIN: Just to add, your Honor, to give your
25 Honor as much information as we have, there were two others who

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were charged. One by the name of Guenther Grant Klar, who went to trial and was convicted, and then another individual, Anthony Mark Patterson, who pled guilty before his trial and, I think, shortly before Mr. Shah went on trial. My understanding is that after Mr. Shah's trial is when Mr. Stein, Mr. Lhote, and Mr. McGee would go to trial.

MR. LEVY: Just so it's clear, might as well fill in the details, those two defendants whose guilt has already been determined, they are not charged together with Mr. Stein and Mr. Lhote and Mr. McGee. They're charged in a separate charging instrument, as is Mr. Shah, the Mr. Shah who's on trial. And the timing of Mr. McGee and Mr. Lhote and Mr. Stein's trial will in part depend on whether some of the defendants, who have not engaged with the prosecutor at all, are somehow located.

THE COURT: OK.

MR. LEVY: Again, I don't have visibility into sort of the next stage of the case.

THE COURT: That's fine.

All right. So with respect to the amended — or proposed amended complaint, I really hadn't quite intended to set off this level of almost kerfuffle.

Let me say that as far as the law goes on whether a stipulation containing a date to file an amended pleading is sufficient to constitute consent to an amended pleading, I can

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1 appreciate both sides of the argument, both types of cases.

2 And I'd say that if I needed to apply the law, I would say it
3 depends on the nature of the amendment proposed, but I'm not
4 sure that we have to get there.

5 So let me ask a couple of questions. So, first, other
6 than re-denominating Mr. McGee as a nominal defendant, does the
7 proposed amended complaint do anything else of significance?

8 MR. LEVY: It depends on the meaning of
9 "significance."

10 THE COURT: Tell me what it does.

11 MR. LEVY: I'm perfectly happy to provide to the Court
12 sort of a comparison of the original complaint against the
13 amended complaint if it would help the Court.

14 THE COURT: We maybe should have asked for that
15 already.

16 MR. LEVY: I happen to have one copy.

17 THE COURT: Could I borrow it?

18 MR. LEVY: You can.

19 THE COURT: I'll give it back.

20 MR. LEVY: OK. And I apologize, I anticipated —

21 THE COURT: It's my fault. We tend to ask for that.

22 MR. LEVY: Most of the changes — before your Honor
23 sort of wades into it, most of the changes sort of just
24 identify the parties a little bit differently, just to make it
25 a little more concise and not full of so many words. There are

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1 some additional factual allegations about communications by
2 SØIK to the Department of Justice that confirm that SØIK did
3 not have visibility into the settlement agreement. And I
4 can —

5 THE COURT: I'm familiar with that from something
6 else.

7 MR. LEVY: But in general, it doesn't change the
8 nature of the legal theories that are articulated. The biggest
9 substantive change is ensuring that Mr. McGee is a party to the
10 cause of action by which we seek rescission so that there's no
11 doubt that the Court can, if it gets there, provide for full
12 relief. Again, we explain the reason for this in our letter.

13 THE COURT: OK. Well —

14 MR. LEVY: But that's essentially it.

15 THE COURT: All right. Let me first ask Mr. Weinstein
16 a question.

17 Is SKAT still pursuing the defense that plaintiffs
18 have failed to join a necessary party?

19 MR. WEINSTEIN: Certainly not with respect to
20 Mr. McGee, so I'll explain that.

21 We agree that the fact that we had named Mr. McGee as
22 a counterclaim defendant takes care of any issue that he's not
23 a party to the case and therefore the Court may not be able to
24 address the rescission claim. We have it still in our answer
25 really as a belt-and-suspenders because there are other parties

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1 to the settlement agreement. It's not just these three
2 individuals. There were many settling parties.

3 Be up front with the Court. We do not expect there to
4 be a need to press that defense, but at the outset of the case
5 we put it in because you can't anticipate where they're
6 necessarily going with everything. But we don't see that as an
7 issue in the case as to whether the parties necessary here are
8 really joined so that the Court can address it.

9 THE COURT: But the other parties have paid whatever
10 they were required to pay, correct?

11 MR. WEINSTEIN: Correct, correct.

12 THE COURT: So there's no relief that you could be
13 seeking from them, right?

14 MR. WEINSTEIN: We're certainly not seeking relief
15 from them in this case. The issue is they were seeking
16 rescission of the settlement agreement, the plaintiffs were.
17 We think for sure Mr. McGee is a necessary party for the Court
18 to address rescission because he still has obligations under
19 the agreement. The other parties don't. We had it in there as
20 a defense, in case somehow it became an issue, but we do not
21 see that as an issue for the Court. We do not think that an
22 amendment here is necessary to add Mr. McGee as a nominal
23 defendant at this point.

24 THE COURT: Well, is it like chicken soup; you know,
25 it can't hurt?

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1 MR. WEINSTEIN: I'm not sure that's why one would
2 amend a complaint. Can it hurt? No. Should the Court permit
3 an amendment? No. And I can explain that.

4 THE COURT: In other words, if Mr. Levy had sent you
5 this redline and said: Mr. Weinstein — maybe address you by
6 your first name — would you consent to us filing this? What
7 would you have — you would have said no?

8 MR. WEINSTEIN: The only issue it raises, your Honor,
9 is it's unnecessary to the case. It's not clear why they need
10 this amended complaint.

11 THE COURT: We don't always know why the other side
12 wants whatever it is that they want.

13 MR. WEINSTEIN: True. But putting aside they don't
14 need the nominal defendant — I think it sounds as though
15 everyone agrees on that — the only other real amendments in
16 here are some facts, for example, as Mr. Levy said, regarding
17 SØIK's, not SKAT's, communication with the Department of
18 Justice. They're facts unnecessary in the complaint, for sure.
19 If they want to bring them to trial or — the prejudice at this
20 point is (1) we should be closing the pleadings. So this an
21 unnecessary amendment that requires answers by people. We're
22 extending pleadings unnecessarily. They have argued now — we
23 put in a pre-motion conference letter to your Honor on a
24 judgment to the pleadings. One of their arguments is —

25 THE COURT: We'll talk about that later.

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1 MR. WEINSTEIN: Right, but their argument is it's
2 premature. At least that's one of their argument. So that is
3 a prejudice to why are we going through another set of
4 pleadings that have no real purpose to move this case along?

5 Putting that aside, is there additional prejudice?
6 No, I can't tell you there's more prejudice than that.

7 THE COURT: I guess one of the things that I'm
8 actually most curious about is the following:

9 Mr. Levy, or perhaps Mr. Newman, is there an
10 explanation that can be shared with the Court as to why
11 Mr. McGee is not one of the named plaintiffs, since he seems to
12 be similarly situated to the others?

13 MR. NEWMAN: So, Judge, I can't answer that because we
14 were not part of the filing of the complaint. We were not a
15 party to that.

16 THE COURT: I would have guessed that you were asked,
17 but I'm not seeking attorney-client privileged information.

18 MR. NEWMAN: I can't answer that for myself. I can
19 tell you that this attorney was not part of that. So that
20 would — I can't answer that question as to whether any other
21 attorney was. Our firm was not, and we were not part of the
22 complaint.

23 THE COURT: And would I gather that you've not sought
24 to be joined as an actual plaintiff?

25 MR. NEWMAN: Yes, your Honor. We did not request to

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1 be joined as an actual plaintiff.

2 THE COURT: So am I going to go out of this conference
3 as uninformed as I came in as to why there is this rather odd
4 structure in this complaint? That may be where I'm going to
5 be. I'm not saying that that's unacceptable. It doesn't
6 certainly satisfy my curiosity.

7 MR. LEVY: Fair enough. I'd be happy to explain ex
8 parte a little bit more why sort of this series of events
9 occurred in the way that it did. We want to make sure that
10 SKAT does not say at some later date either that person or that
11 set of people need to be parties to this case in a certain way,
12 otherwise the Court cannot order rescission.

13 Mr. Weinstein said we're not intending to press that,
14 and that's all well and good, but without a little more
15 definitiveness, I don't know if that's quite good enough. This
16 is the reason why we were a little bit confused, because in the
17 initial letter briefs that were filed early on, SKAT said
18 Mr. McGee needed to be a party for the Court to be able to
19 order rescission. If we didn't amend, they would make him a
20 party. They did make him a party, and then they continued to
21 assert this failure to join an indispensable party defense.

22 So we're thinking what is going on? We're not going
23 to stand by and get to the end of the case and have someone
24 say: Excuse me, Mr. McGee is not either here or here in the
25 way that we say he should be here. Therefore, you're out. We

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1 were not going to have that.

2 There was a little bit of — I would be sort of
3 characterizing it gently to say an equivocation on the part of
4 SKAT, so we fixed it on our own. And that's the reason why we
5 did it this way. We weren't trying to create extra work for
6 anyone. We were trying to make sure, if there comes a time
7 that the Court finds in it that it should order rescission,
8 everyone necessary to do that is before the Court.

9 It was helping helpful to hear Mr. Weinstein confirm
10 that the remaining parties to the settlement agreement don't
11 have any further obligations, and as a result, they don't need
12 to be here. That's helpful, but I'm not sure it quite goes all
13 the way.

14 THE COURT: All right.

15 MR. LEVY: And that's the reason we sought to do it
16 this way.

17 MR. NEWMAN: And, Judge, I should add, I don't recall
18 whether we were asked to be part of it, but I do know that we
19 were never a part of it. When this thing was filed, it was a
20 while ago. I do not recall us being asked to be a part of it,
21 but that could be incorrect. It's been probably a year since
22 it was filed. I don't want to say something that's incorrect
23 based on timing, but I do not recall this being something that
24 Mr. McGee certainly initiated.

25 MR. LEVY: Maybe if I could sort of speak

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1 hypothetically, maybe I could fill in some of the
2 considerations that someone in the position of Mr. Stein or
3 Mr. Lhote or Mr. McGee might have that might drive their
4 decision-making.

5 THE COURT: OK.

6 MR. LEVY: No one wants to antagonize the prosecutor,
7 right, the prosecutor in Denmark? And you could imagine
8 different people might have different views about whether
9 taking this step to rescind this settlement agreement would
10 provoke the prosecutor in Denmark. No one wanted to do that.
11 The question is sort of what could do that? And you could
12 envision that reasonable people would differ about whether
13 that's the right thing to do.

14 I think that's as much as I could say, and hopefully,
15 that helps the Court understand why different people who are
16 arguably identically situated might come to a different view
17 about whether to be on one side of the V or on the other side
18 of the V.

19 THE COURT: Well, let me say that I don't see any
20 meaningful basis on which I could deny the plaintiffs' request
21 to file the amended pleading, so you have my permission to do.

22 MR. LEVY: Just, logically, it's already been
23 filed. If you order —

24 THE COURT: OK. Then it's OK. Then it should be
25 answered.

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1 MR. LEVY: Thank you, your Honor.

2 THE COURT: So let's turn to the 2B letters.

3 Let me say at the outset I have deep skepticism about
4 the proposed motion because it seems that if I accepted this
5 position, that it would eliminate the consideration that the
6 plaintiffs bargained for. But further, the suggestion of this
7 motion at this stage comes across as virtually an admission
8 that SKAT did not make the communications with SØIK that it was
9 required to do.

10 Is that a conclusion that I should be drawing from the
11 proposal?

12 MR. WEINSTEIN: No, your Honor, that certainly wasn't
13 the intent.

14 THE COURT: Well, if you did what you're supposed to
15 do, why do you come up with this argument that just seems
16 contrary to every kind of basic notion of fairness that it's a
17 "heads I win, tails you lose" argument?

18 MR. WEINSTEIN: Well, with respect to the
19 consideration, the key consideration in the agreement, which
20 was provided, released us from the lawsuit. That's not in
21 dispute that we released the settling parties from being able
22 to bring any claims once they made an initial payment. So they
23 got the consideration. In the settlement agreement, that's a
24 key consideration, for sure.

25 With respect to the concession, it is not meant to be

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1 a concession at all. The argument is it really does not matter
2 under the agreement whether or not SKAT complied with 8(f).
3 It's in there, but it's not deemed to be an event of default.
4 It cannot be material, ultimately.

5 THE COURT: How can it not be material? This type of
6 negotiation is typical, or at least not uncommon, in cases in
7 the United States all the time where the fraud is of a
8 financial nature, whether it's tax fraud or something else, and
9 the prospective defendant is in the position of being able to
10 make the defrauded party or parties whole and tries to pay a
11 ton of money to avoid being criminally prosecuted. It is not
12 an uncommon fact pattern.

13 This seems to be essentially the same thing. We've
14 paid the money. You know, Denmark should find that sufficient,
15 and please let the prosecutor know that. I don't see how that
16 is insignificant.

17 MR. WEINSTEIN: So for two reasons, your Honor: One
18 is I think one answer lies in even your initial question and
19 the answer by Mr. Levy about Danish procedure versus — Danish
20 criminal procedure versus U.S. criminal procedure. What may be
21 commonplace in the United States is not necessarily the case in
22 Denmark. In Denmark, the prosecutors, the criminal
23 prosecutors, cannot bargain that away. They can't take it into
24 consideration in whether to charge a defendant. The only time
25 it could be used — and it's not the prosecutor who makes any

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1 of that decision — is if the person gets convicted, it is
2 something, ultimately, that the judge can take into account at
3 sentencing.

4 These folks have not yet been convicted, much less
5 sentenced. So even assuming there was a breach — and I'll get
6 to that in a moment, whether there was a breach — but even
7 assuming there was a breach, not only is it not too late, the
8 only time it could be relevant is perhaps still years away from
9 now. So the sentencing judge, if they get to that point, can
10 certainly take all this into account.

11 THE COURT: So that means that when you included this
12 provision in this the agreement, it was illusory at the outset.
13 And you, being the Danish side of it, understood that whatever
14 SKAT said to SØIK was just immaterial. That SØIK could not
15 consider, as part of its charging decision, the fact that the
16 country had been either made whole or close to whole or
17 significantly better by virtue of the moneys that the
18 wrongdoers had paid over and would pay over.

19 MR. WEINSTEIN: It's a term that, if my recollection
20 is correct, was something that they wanted. As you say, no
21 harm, no foul if there wasn't a disagreement to put it in. But
22 my understanding is that under Danish law that is not something
23 that a prosecutor can take into account in a charging decision.

24 THE COURT: That seems a little hard to totally
25 comprehend because every charging decision involves many

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1 factors. So why would paying back the stolen moneys, returning
2 the crown jewels, or whatever, why would that not count? Why
3 would any prosecutor be so limited?

4 What if the family of the victim said: You know,
5 really, we don't want to go through a trial. It's over. We're
6 sad, but we're true forgiving religious people. We don't want
7 you to do this. We've forgiven this fellow who killed our
8 family member. We don't want you to. You're telling me the
9 prosecutor can't consider more than the fact of the crime?
10 Otherwise, that's just mechanical.

11 MR. WEINSTEIN: I can't answer that question or
12 hypothetical with any certainty because it's an issue of Danish
13 law. I understand where your Honor is coming from, and
14 obviously under U.S. law it's a factor that a prosecutor may
15 take into account. But my understanding is — there may be an
16 exception or two. I don't think they would be applicable to
17 our case, but I'm not sure what they are. So in the case of
18 your Honor's example, I don't know if there would be some kind
19 of exception.

20 But my understanding is they are to — when they are
21 investigating a case and determining whether to charge, they
22 base it on the facts and the evidence of whether they have
23 enough evidence to bring —

24 THE COURT: The logic of what you said is they should
25 never have paid anything because it doesn't matter. In other

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1 words, they might be acquitted, and they could pay after they
2 were — or if they were convicted, they'd pay it later, and
3 then the judge would consider it then.

4 MR. WEINSTEIN: Well, I think two things: One is what
5 would potentially be helpful for them in a criminal case. The
6 other is why would they pay at all up front? It's two
7 different considerations. If the issue is how are we going to
8 convince a sentencing judge, if we ever get there, that the
9 sentencing judge should go light? I think there's a good
10 reason to pay up front than to wait to see if you're convicted.

11 THE COURT: I agree with that.

12 MR. WEINSTEIN: Right. That's potentially a
13 motivation if all you care about is your criminal exposure.

14 There's good reason to pay up front because they
15 didn't get — two thing: They didn't get sued at the time. I
16 mean, actually, I don't want to go into what their motivations
17 may have been — not being named in public suits, not having
18 the exposure of — the amount they paid back is a subset, less
19 than 50 percent of the losses caused, and they got releases.
20 And the releases are effective, and no one's arguing that the
21 releases are not effective. So putting aside what they thought
22 about criminal exposure, there was good reason to make the
23 settlement regardless of what Danish criminal law might be.

24 So I don't think there is a reason that they would
25 have just said: Well, unless you're promising something on the

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1 criminal side, we're just not going to settle.

2 They also, I should say, were very, very well lawyered
3 up here, both on the U.S. side and on the Danish side. This is
4 not an issue of SKAT's just trying to get these three
5 individuals to settle. They don't have counsel. They had a
6 bevy of sophisticated lawyers on both sides of the ocean. So I
7 assume they got advice on all these issues, took that advice
8 into account, and decided to settle.

9 I do want to go back, if it's appropriate at this
10 point, your Honor, to the issue of the breach, why we would
11 bring this motion.

12 THE COURT: Well, not just why would you bring it, but
13 why do you bring it now? Why didn't you bring it at the very
14 beginning of the case?

15 MR. WEINSTEIN: Because it's a judgment on the
16 pleadings. That's partly why I was saying —

17 THE COURT: Well, you had pleadings.

18 MR. WEINSTEIN: But the pleadings had to be closed.
19 Our understanding of the rule is until the pleadings are
20 closed, meaning —

21 THE COURT: Wasn't there the original complaint and
22 you answered it?

23 MR. WEINSTEIN: There were counterclaims that needed
24 to be answered. We asserted counterclaims.

25 THE COURT: Right.

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1 MR. WEINSTEIN: They hadn't answered yet.

2 THE COURT: OK.

3 MR. WEINSTEIN: That was the only reason we waited.

4 Our understanding of the rule, we simply couldn't file it until
5 all the pleadings were closed.

6 With respect to the breach, there are a number of
7 arguments to make. I can walk you through the evidence. I
8 don't have each document at my disposal, but SKAT made SØIK
9 aware of these terms. I think your Honor had seen the email
10 at, perhaps, our first conference in court where they literally
11 sent to SØIK 8(f), the actual words of 8(f), before it was even
12 — before the agreement was even signed, in part — and we
13 produced these documents so it's going to come out — because
14 SØIK itself, anything that had to do with anything criminal,
15 they wanted to see what it was. So they fully understood that
16 provision, they were fine with it, and it went into the
17 settlement agreement. SØIK was fully aware of what was going
18 on with the settlement agreement.

19 There's another email after the settlement agreement
20 was executed that re-sends them the actual language of 8(f).
21 They go back and forth on press releases that were to be issued
22 about the settlement agreement which contain — I don't know if
23 it's each element of 8(f), but certainly some of the elements
24 of 8(f), like this is in the interest of SKAT to have settled
25 this case, things like that. They were certainly made aware in

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1 writing.

2 The only reason, frankly, to make that motion, in
3 part, because a key issue in the case is whether they breached
4 something that was absolute and unconditional, is the fact that
5 SØIK was informed, ultimately, I don't think can be in dispute.
6 They were also informed orally. One could take the position
7 that the various writings, taken together and orally, weren't
8 entirely sufficient or — I'm sorry. That the settlement
9 agreement provision says it has to be in writing, right?

10 We would say, first of all, they got various documents
11 in writing that informed them of these terms, but there were
12 also discussions, oral discussions, with the highest levels at
13 SØIK. You could argue, well, the oral discussions don't
14 technically comply with 8(f) because it says "in writing." OK.
15 But it's immaterial. That's why I got to materiality before,
16 your Honor. It's immaterial because, at the end of the day,
17 SØIK knew the information. The fact that it's not perhaps in
18 the type of letter that Mr. Levy would like it to be in can't
19 be considered a material breach because SØIK knew the
20 information. So if the point is we needed SØIK to know the
21 information, they knew it. So a technical breach would not be
22 material.

23 Then we get back to that their obligation was absolute
24 and unconditional. The term speaks for itself, but — in any
25 event, so that's why the combination of things is why we

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1 decided to make a motion. And the reason we waited is as I've
2 said. It's our understanding, under the law, we just couldn't
3 bring that sooner.

4 Look, sort of cut to the chase, because we are not
5 trying to make this case harder for the Court.

6 If your Honor thinks there's factual pieces that go
7 into that, right, at the moment at least, we are hoping that
8 the case is decided certainly by December 10, one way or the
9 other. If it's going to cause too many separate pieces to be
10 done, we can just deal with all of it at once, not make the
11 motion. It would be part of whatever it is your Honor's going
12 to do to decide this case. We are certainly not trying to make
13 this case harder, but it was never intended and shouldn't be
14 conceived as an admission that we had an issue with complying
15 with 8(f).

16 THE COURT: Well, first of all, my reaction has
17 nothing to do with whether we will have one more motion on our
18 docket than not. That was not remotely on my mind.

19 It really was what I said. To me it has an
20 unattractive quality because it doesn't seem fair and didn't
21 seem that there was a lot of good law on your side. I'm well
22 aware that under New York law that — because it came up in one
23 of the cases earlier this year — that absolute and
24 unconditional language has purchase in the context of
25 guaranties, but this is not a guaranty.

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1 As I said, if you believe you can really win on the
2 merits, that you did what you were supposed to do, it doesn't
3 seem to me that establishing that you did perform your
4 obligations in terms of SØIK should be that difficult to put on
5 paper, and therefore, it struck me that perhaps it was to avoid
6 the merits.

7 And I certainly was aware of Mr. Levy's submission of
8 a document, I guess, between SØIK and the Department of Justice
9 that indicated that SØIK was unaware. I have no idea whether
10 that's meaningful. I don't know who is writing it. There are
11 chains of authority, and some people know and some people don't
12 know, and that's not necessarily dispositive as to whether SKAT
13 did what it was supposed to do at the level it was supposed to
14 do. And it may just be that this is a very high-level
15 conversation and that the person who is writing was just — it
16 was above their pay grade, as it were.

17 MR. WEINSTEIN: May I pick up on that point, your
18 Honor?

19 THE COURT: Yes.

20 MR. WEINSTEIN: So one of the amendments to the
21 complaint, if your Honor — I don't know if your Honor —

22 THE COURT: I still have it. I've got it here.

23 MR. WEINSTEIN: So if you look at paragraph — it
24 would be the new paragraph 67. I think it's on page 19.

25 THE COURT: Yes.

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1 MR. WEINSTEIN: Just to make sure we're on the same,
2 it starts with "The writing required by Section 8(f)"

3 THE COURT: Yes, I have it. It's on page 17 on my
4 copy.

5 MR. WEINSTEIN: Yes.

6 If you look at the next section, your Honor, they made
7 some interesting tweaks to this paragraph. It says: "Without
8 a writing, Stein owed McGee (a)," it used to say "could not be
9 assured that SØIK was informed of plaintiffs' efforts." The
10 amendment says "could not be assured that SØIK, including all
11 of its various components, was informed," and it goes on.

12 And then if you look at (c) — I'm sorry, (b) they've
13 added another clause. It used to say "could not be assured
14 that any information imparted to SØIK would become part of the
15 official records and institutional memory of SØIK." They've
16 added "and would be communicated widely within SØIK."

17 Why are those interesting? For the very reason your
18 Honor just said. The communications that SKAT had with SØIK
19 from the very outset were at the very top of SØIK. Per Fiig
20 was the head of SØIK. That's who they were communicating this
21 information to. He signed their indictment. He knew exactly
22 what he was doing when he signed that indictment. How they
23 communicated internally within SØIK, we have no idea. We don't
24 have insight into that. It doesn't matter. There's nothing in
25 the settlement agreement that says, as they have now added to

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1 this complaint, "make sure it was communicated widely within
2 SØIK or that the various components of SØIK would know the
3 information."

4 Can we explain why a low-level SØIK prosecutor in
5 early 2021 sent a communication to the Department of Justice
6 asking — or indicating they didn't know about the settlement
7 agreement? No, because that's not us, and certainly their
8 bosses knew. So I think it does come — and that's why they're
9 tweaking this complaint in that way, because they knew —
10 they've now seen the discovery. The communications happened
11 between the top levels at SKAT and the top levels at SØIK.

12 THE COURT: Mr. Levy, do you want to say something?

13 MR. LEVY: Just a couple of things.

14 Mr. Weinstein said they got the consideration, and I
15 think your Honor picked up on it. This was their lifeline.
16 This was their ability, promptly upon signing the settlement
17 agreement, to influence the prosecutor in a positive way. And
18 I know we've had some back and forth with the Court on that,
19 but all of the things required by 8(f) would inure to their
20 benefit in the eyes of the prosecutor: They settled. The
21 settlement was the result of good faith negotiation. Their
22 cooperation would assist SKAT in recovering funds from others.
23 To know the terms of the settlement agreement, all of that, on
24 balance, would put them in a more positive light and not,
25 certainly, in a more negative light.

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1 That's what they bargained for, and they didn't get
2 that. That's a factual dispute, and all of the facts will be
3 put before the Court as to whether SKAT did what it was
4 required to do under 8(f). But this was their lifeline, and
5 they didn't get that consideration.

6 Mr. Weinstein said that the prosecutor cannot take all
7 of these facts, everything that was required to be represented
8 in 8(f), into consideration. We expect to put before the Court
9 an opinion of a Danish criminal law professor to explain why
10 that's just wrong; that the prosecutor absolutely could have
11 taken this into account and that SKAT's breach is a material
12 one.

13 THE COURT: Exactly what is the breach, then?

14 MR. LEVY: The breach is the failure to comply with
15 8(f).

16 THE COURT: But Mr. Weinstein says we communicated and
17 some of it is in writing, and that, in fact, the prosecutors
18 saw 8(f) before it was born, in a sense. That's —

19 MR. LEVY: I'm perfectly happy to walk through the
20 whole chronology and tell you all the instances in which it's
21 obvious that SØIK didn't know. Let me give you an example
22 beyond the one — or let me give you a little bit more context
23 to the communications that we've previously provided to the
24 Court about the interactions between SØIK and the Department of
25 Justice. This is one of the things we added into the

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1 complaint.

2 THE COURT: Just let me ask you a question.

3 MR. LEVY: Sure.

4 THE COURT: SØIK filed the criminal charges on —

5 MR. LEVY: April 2021.

6 THE COURT: And the communications with the Department
7 of Justice were when?

8 MR. LEVY: In 2020. And the settlement agreement was
9 in May of 2019.

10 So with that structure in mind, in April of 2020, the
11 Danish prosecutor went to the court to get a seizure order, an
12 order permitting that Mr. Stein and Mr. Lhote and Mr. McGee's
13 assets be seized. In doing so, the Danish prosecutor did not
14 tell the Court — repeat, did not tell the court — that
15 Mr. Stein and Mr. Lhote and Mr. McGee had settled.

16 THE COURT: From which court?

17 MR. LEVY: A local court in Denmark. They got a
18 seizure order. They didn't tell the court this was — and this
19 is the kind of thing that a Danish lawyer would expect to be
20 told to the court, and we'll explain that through an expert.
21 And they got a seizure order, and they began to have
22 communications with the Department of Justice about getting the
23 Department of Justice to enforce that seizure order.

24 There's a federal statute that allows a U.S. court to
25 enforce a foreign seizure order under certain circumstances.

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1 And all of the — that string of emails that we previously
2 provided to the Court is part of the back and forth between the
3 Department of Justice and SØIK about whether we, the Department
4 of Justice, can enforce this order.

5 THE COURT: I don't understand what — why would the
6 failure of SØIK to tell a Danish court about the settlement
7 agreement be material in any way? In other words —

8 MR. LEVY: It tends to show that they did not know.

9 THE COURT: Or that they knew and SØIK had already
10 decided that it was going after your guys and that the first
11 step to do that was the seizure order, and they weren't —

12 MR. LEVY: But as you saw in that email, a
13 representative of SØIK said to the Department of Justice: We
14 don't know anything about it.

15 THE COURT: All right.

16 MR. LEVY: So, again, I'm perfectly happy to walk
17 through all the facts, but they'll ultimately be put before
18 you, and you'll have to make a determination about whether SKAT
19 complied with the requirement or not. And all of these emails
20 will be before you, and you'll be able to decide.

21 I'm happy to walk through numerous other examples, but
22 I don't think it's important now because it's just a factual
23 dispute that you'll ultimately have to decide. But I wanted to
24 make it clear that it is material. The timing is also
25 material, the fact that it was — that whatever communications

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1 there were were not promptly upon the execution of the
2 settlement agreement. We expect to put in some expert
3 testimony on that subject so that the Court understands the
4 Danish law that Mr. Weinstein said would be relevant to this.
5 He's wrong. A prosecutor can consider it. And I think your
6 Honor's common sense inclination that it would be an incredibly
7 odd system if the prosecutor could not consider a settlement
8 between the entity that claims it's the victim and the people
9 that it claims to have been defrauded. And as you might
10 imagine, you're right on this one. The prosecutor can
11 consider.

12 MR. WEINSTEIN: Your Honor, if I may, maybe I can cut
13 a little of this short, because this is prompted by our letter
14 motion.

15 THE COURT: Right.

16 MR. WEINSTEIN: We will withdraw the letter motion
17 because we want to make clear we have no interest in avoiding
18 the facts of the case or establishing with your Honor that
19 there's not a breach, and certainly, if there is a technical
20 breach, it couldn't have been material for a number of reasons.
21 We would have expected that would have had to come before your
22 Honor anyway because they still would have a claim for breach,
23 but let's shortcut the process. We will withdraw the letter
24 motion, and let's set dates to get this case to where it needs
25 to be.

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1 THE COURT: All right. So you guys want to —

2 MR. LEVY: So I think the first date that we would
3 need to set is the date for SKAT and Mr. McGee to answer the
4 complaint that the Court has deemed filed, and we believe they
5 should have whatever amount of time they would like.

6 THE COURT: OK. You guys want to talk about a
7 schedule? I don't know if you're assuming summary judgment
8 motions or you're assuming — I would think a nonjury trial, I
9 would think.

10 MR. LEVY: The jurisdictional provision provides for a
11 nonjury trial.

12 THE COURT: Right. That makes sense.

13 I don't know what's between an answer and whatever
14 mechanism you want to use to resolve the merits.

15 MR. LEVY: There's some discovery-related deadlines
16 that it would be helpful to have some guidance from the Court,
17 but I think the first one in time — first one logically is
18 just the time to answer the complaint that the Court has deemed
19 to have been properly filed.

20 MR. WEINSTEIN: From SKAT's perspective, we can answer
21 within a week. It should not delay any aspect of this case.

22 THE COURT: OK.

23 MR. NEWMAN: So, Judge, we would ask for two weeks,
24 but we can do that within two weeks.

25 THE COURT: By the way, Mr. Newman, do you anticipate

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1 in any way objecting to Mr. McGee being named as a nominal
2 defendant?

3 MR. NEWMAN: At this time, your Honor, I don't
4 anticipate us being — objecting to that. I mean, quite
5 frankly, if he is named as a nominal defendant, it brings all
6 the parties officially before the Court for purposes of
7 resolving the rescission claim. So I don't envision us
8 objecting to that.

9 THE COURT: OK.

10 MR. LEVY: The Court had previously set a date to
11 complete fact depositions. We've had some scheduling issues.
12 I got COVID and had to cancel a deposition.

13 THE COURT: Is that where the beard came from? No,
14 OK.

15 MR. LEVY: I have a back and forth with my wife about
16 whether a beard should be had or should not be had. Next time
17 you see me, it will not be had. I can promise you that.

18 THE COURT: OK.

19 MR. LEVY: Sometimes just things pile up, and it's the
20 last thing to go is shaving.

21 THE COURT: OK.

22 MR. LEVY: But we've now been able to work out some
23 scheduling, and the parties had agreed that the fact deposition
24 should be completed by June 10 and that the interrogatories and
25 requests for admission should be completed by June 14 —

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1 served.

2 THE COURT: Served.

3 MR. LEVY: Yes. I'll send to your Honor's law clerk a
4 proposed order that sets all this out.

5 THE COURT: OK.

6 MR. LEVY: Hopefully, we can work it out.

7 On the issue of expert discovery, I had some
8 discussion with Mr. Weinstein. I'm not quite sure we bottomed
9 out on that. SKAT was expecting to submit an expert report
10 about a lot of the true-up numbers, and we've been in
11 discussions with SKAT to hopefully obviate that. I expect that
12 we'll be able to avoid SKAT's having to put in an expert report
13 by stipulating to some of the math and then reserving for the
14 Court some of the conceptual matters that will drive the math.

15 THE COURT: OK.

16 MR. LEVY: If that makes sense.

17 THE COURT: I'll learn. Someday it will.

18 MR. LEVY: I think it will become relatively clear in
19 due course. So I'm hoping to avoid SKAT's having to do that.

20 The current deadline to serve expert reports is
21 June 24. And the expert on matters of Danish criminal law, he
22 and I spoke this morning, and he's hoping to be able to have
23 until July 10 to complete his report. That's about — it's
24 about two weeks after June 24. I propose that date. I hadn't
25 been able to obtain Mr. Weinstein's agreement to that.

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1 Hopefully, we can.

2 And then, if we can work that out, then I think we can
3 work out the date for rebuttal reports and the completion of
4 expert discovery. Mr. Weinstein has a great number of Danish
5 lawyers at his disposal.

6 MR. WEINSTEIN: I'm not sure what that means, but —

7 MR. LEVY: I could clarify what it means. The entire
8 weight of the Danish government is on Mr. Weinstein's side.

9 THE COURT: Well, that makes some sense.

10 MR. WEINSTEIN: You know, when I was a prosecutor
11 here, your Honor, in the U.S. and the other side used to say,
12 "You have all the resources of the federal government at your
13 disposal," it didn't mean a lot, because you don't have a lot
14 of resources in that office, I must say. I think it goes the
15 same way.

16 THE COURT: Right.

17 MR. WEINSTEIN: Look, I generally hate to argue with
18 — and I don't want to do it before the Court with extending
19 deadlines — but there is a timing issue in this case, and my
20 concern has always been — it's easy for us to say we're going
21 to keep extending discovery deadlines, which all that means is
22 it's potentially compressing the time for the Court to consider
23 the ultimate merits.

24 THE COURT: I think really what you have to work out
25 between you is your mechanism to resolve the ultimate merits.

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1 MR. WEINSTEIN: Yes.

2 THE COURT: If you let me know what that mechanism is
3 going to be, then I can schedule that.

4 MR. WEINSTEIN: I think I can do that now. I believe
5 there is agreement that it would just be a trial, a nonjury
6 trial before your Honor. I think you had indicated at a prior
7 conference that you would want any direct testimony for sure by
8 affidavit.

9 THE COURT: By affidavit.

10 MR. WEINSTEIN: Which makes sense. You would want it
11 well before the trial starts. So I don't see this being
12 summary judgment.

13 THE COURT: OK.

14 MR. WEINSTEIN: I think both sides agree that that's
15 sort of just a waste of an extra set of papers. But there may
16 be some briefing. I think the only issue is whether your Honor
17 wants any briefing before the trial on legal issues or would it
18 just be posttrial briefing.

19 MR. LEVY: On that subject, it may help for us to come
20 back a little bit later, maybe after some of the discovery has
21 been completed, to talk about that again. There's also —

22 THE COURT: Let me just say that it sort of does, I
23 think, matter what the legal issues are because, just like *in*
24 *limine* motions in a criminal case, it tells you something about
25 how the trial's going to go, and that may be relevant here. I

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1 don't know what you're talking about, so it's hard to respond.

2 But I generally really like to go into a trial as informed as I
3 can possibly be. So I think I would want to know what the
4 legal issues were that the trial might have impact on.

5 Look, I think —

6 MR. LEVY: Sorry.

7 THE COURT: — what I would like is for you to work
8 together as much as you can. If you can't work out a proposal
9 that has a timing that gives me enough time, I will work out
10 one for you, but I sort of always prefer to let counsel do
11 their best on their own.

12 MR. LEVY: You will recall previously that the parties
13 had entered into a stipulation tolling the last date for the
14 filing of an affidavit of confession of judgment. We've always
15 said we would consider entering into another one so that the
16 Court has sufficient time for it to conduct a trial and then
17 consider — and have either posttrial briefing, proposed
18 findings of fact and —

19 THE COURT: If I don't have a drop-dead date in front
20 of me, which is what I thought I had, I'm obviously more
21 flexible.

22 MR. LEVY: And I just wanted to make the Court — have
23 the Court be perfectly clear that we are not looking to cause
24 the Court agita by having a drop-dead date that can be easily
25 extended. We would agree to — we can talk about that with

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1 opposing counsel, but I think we can — let's hope that we can
2 work out the next set of deadlines. I think we've worked out
3 some of them, and we've gotten, hopefully, most of the way
4 there for at least this next stage.

5 THE COURT: Sounds good.

6 MR. NEWMAN: Judge, I would second that we're not —
7 we're willing to extend any drop-dead dates. We don't want an
8 undue burden on the Court. That's not the purpose of this to
9 lead everyone up to a deadline.

10 THE COURT: Well, that's fine.

11 I think this has been very useful, and thank you for
12 coming.

13 MR. LEVY: Thank you, your Honor.

14 MR. WEINSTEIN: Thank you.

15 (Adjourned)

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